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TO: **All Health Maintenance Organizations, Health Service Corporations, Medical Service Corporations, Hospital Service Corporations, and Insurers Authorized to Transact a Health Insurance Business in New Jersey Offering Managed Care Plans**

FROM: **Holly C. Bakke, Commissioner, New Jersey Department of Banking and Insurance, jointly with Clifton R. Lacy, M.D., Commissioner, New Jersey Department of Health and Senior Services**

RE: **Impermissible Practice of Retainer Medicine by Network Physicians**

The Department of Health and Senior Services and the Department of Banking and Insurance (collectively, "Departments") are aware that some physician practices are affiliating with or establishing retainer programs, yet requesting to join or remain under contract with HMOs and other carriers as participating providers. Retainer programs limit the practices' panels of patients to those that agree to pay a fee to the practice for a set of services to be delivered for a specific period of time. This Bulletin sets forth the Departments' position that it is inappropriate for HMOs and other carriers to have providers in their networks who require patients to enroll in retainer programs in order to obtain access to the provider.

The Departments are aware that physicians offering retainer programs assert that the services they offer are complementary to, not duplicative of, the services they are required to render as network providers. In addition, physicians offering retainer programs point out that patients have access to the physician 24 hours per day, 7 days per week. The Departments' position is that many of the services that providers claim are additional services in fact are required by New Jersey law to be covered under most health benefits plans.[1]

[1] Most health benefits plans delivered or issued for delivery in New Jersey are required by law to provide coverage for a range of services. The services required to be covered, or for which benefits must be available, include many preventive services, screenings, diagnostic procedures, as well as treatment and services specific to certain conditions and/or illnesses. The requirement for the provision of preventive

However, the Departments' main objection to networks including physicians who offer retainer agreements is not with whether there is duplication of services. Rather, the Departments' position is that retainer agreements are inconsistent with the requirement that all provider agreements subject to New Jersey law assure that in-network providers do not discriminate in treatment of members or covered persons. (See, N.J.A.C. 8:38-15.2(b)8 and N.J.A.C. 8:38A-4.15(b)7.)

The prohibition against discrimination does not preclude physicians and carriers from agreeing to the establishment of certain limitations in patient panels. Acceptable limitations have been based on the physician's desire not to have an overall patient load greater than an established number, or not to have more than a pre-determined concentration of a specific carrier's members or covered persons in the patient panel, or not to participate in one or more of a carrier's products, or not to enroll any individuals above or below a certain age (typically reflecting limitations in pediatric services). However, a physician's decision to institute a panel limitation based in whole or in part upon a member's or covered person's willingness (or ability) to purchase a retainer contract is not acceptable when that physician participates in a carrier's network. This is true regardless of whether the services covered under the retainer contract duplicate services already covered under the health benefits plan and the network participation agreement.

Every member or covered person has the right to expect access to network physicians (who have openings in their patient panels). No member or covered person should be expected to pay a fee other than the cost sharing of the health benefits plan in order to access services from a network physician. The requirement that a member or covered person pay a retainer fee in order to become a participant in the physician's patient panel violates this principle, even when the fee is limited to the provision of services clearly not covered under the terms of the member's or covered person's health benefits plan. The physician essentially is charging an entrance fee to his or her practice. This is not consistent with the regulations governing network-based delivery systems in New Jersey.

A secondary issue is the direct billing by physicians of members and covered persons for services that may be the liability of the carrier. Network health care providers are prohibited from billing members or covered persons for services for which benefits are available under the terms of the health benefits plan, in whole or in part. The Departments do not believe that the retainer services and the services required to be delivered by the physician pursuant to the network provider agreement are readily distinguishable, not merely because health benefits plans are required to provide certain

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services is flexible, and permits physicians to alter the schedule and types of services as appropriate to the needs of the patient. In addition, physicians contracting with carriers to be primary care providers are required to have arrangements assuring that those members seeking emergency or urgent care have access to triage services 24 hours per day, seven days per week, and are able to obtain an appointment for urgent care within 24 hours, and more immediate access to care in emergency situations through the most appropriate sources. (See N.J.A.C. 8:38-6.2(d) and N.J.A.C. 8:38A-4.10(b).)

benefits, but because most network provider agreements assume that the physicians will render medically necessary and appropriate care to their patients. Health benefits plans that are managed care plans generally do not exclude coverage for the specific sets of medical services that the physicians offering retainer contracts say they will deliver, but rather, cover costs of medically necessary or appropriate services.

Carriers are on notice that arrangements that require members or covered persons to pay a fee, other than the cost sharing of the health benefits plan, (whether referred to as an "access fee," "retention fee," "service fee," or some other name), to gain access to a network provider are not acceptable and should be terminated immediately.

Holly C. Bakke, Commissioner Dept. of Banking & Insurance	Clifton R. Lacy, M.D., Commissioner Dept. of Health & Senior Services